

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

TRAVELL C. HOLMES,

No. 2:22-cv-01271-TLN-CKD P

Plaintiff,

ORDER AND

A. MARTINEZ, et al.,

FINDINGS AND RECOMMENDATIONS

Defendants.

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Currently pending before the court is plaintiff's motion to correct the filing fees in this case. ECF No. 12. In the motion plaintiff indicates that he filed civil rights complaints in this district as well as the Central District of California for which multiple filing fees are being withdrawn from his prison trust account each month. See Holmes v. Johnson, No. 2:22-cv-04832-SPG-PD (C.D. Cal.). A review of the docket in the Central District of California, of which this court takes judicial notice, indicates that plaintiff filed a complaint containing the same allegations against the same defendants employed at California State Prison-Lancaster on July 14,

1 2022.¹ See Holmes v. Johnson, No. 2:22-cv-04832-SPG-PD (C.D. Cal.) at ECF No. 1. The
2 complaint filed in the instant case was filed on July 18, 2022. ECF No. 1.² As this action was
3 initiated later in time and concerns the same defendants at CSP-Lancaster, where venue is proper
4 in the Central District of California, the undersigned recommends dismissing this action as
5 duplicative of Holmes v. Johnson, No. 2:22-cv-04832-SPG-PD (C.D. Cal.). See 28 U.S.C. §
6 1391(b) (explaining federal venue). Because these two actions are duplicative, the undersigned
7 further recommends granting plaintiff's motion to correct the filing fees in this case in the
8 interests of justice. ECF No. 12.

9 Accordingly, IT IS HEREBY ORDERED that:

- 10 1. The February 22, 2023 Findings and Recommendations (ECF No. 9) are hereby
11 vacated.
- 12 2. The orders granting plaintiff in forma pauperis status and directing monthly payments
13 to be made from plaintiff's prison trust account entered on January 4, 2023 (ECF Nos.
14 6, 7) are also vacated.

15 IT IS FURTHER RECOMMENDED that:

- 16 1. Plaintiff's complaint be dismissed as duplicative of his pending action in the Central
17 District of California.
- 18 2. Plaintiff's motion to correct the filing fees (ECF No. 12) be granted to the extent that
19 the Finance Unit is directed to refund any partial payment of the filing fees that were
20 collected for this case.
- 21 3. The Clerk of Court be directed to serve a copy of this order on the Finance Unit and
22 the Director of the California Department of Corrections and Rehabilitation, 1515 S
23 Street, Sacramento, California 95814.

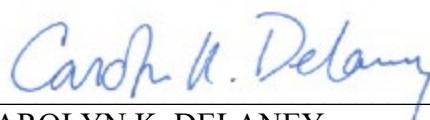
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26 ¹ A court may take judicial notice of court records. See MGIC Indem. Co. v. Weisman, 803 F.2d
500, 505 (9th Cir. 1986); United States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980).

27 ² Plaintiff did not date the complaint so the court is unable to apply the prison mailbox rule to
28 determine the constructive filing date of this pleading. See Houston v. Lack, 487 U.S. 266
(1988).

1 These findings and recommendations are submitted to the United States District Judge
2 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
3 after being served with these findings and recommendations, any party may file written
4 objections with the court and serve a copy on all parties. Such a document should be captioned
5 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the
6 objections shall be served and filed within fourteen days after service of the objections. The
7 parties are advised that failure to file objections within the specified time may waive the right to
8 appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

9 Dated: May 31, 2023



10 CAROLYN K. DELANEY
11 UNITED STATES MAGISTRATE JUDGE

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